

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Mary Kay Folstrom, *et al.*,

Plaintiffs,

Civ. No. 07-3404 (RHK/RLE)

ORDER

v.

County of Cass,

Defendant.

This matter is before the Court *sua sponte*. On August 15, 2007, Defendant filed a Motion to Dismiss this action; the Motion is scheduled to be heard by the Court on November 2, 2007. On October 12, 2007, however, Plaintiff filed a Motion for Leave to Amend the Complaint. That same day, Plaintiff filed her Opposition to the Motion to Dismiss; in that Opposition, she opines that several of the alleged errors in her Complaint will be corrected if her Motion for Leave to Amend is granted. (See Mem. in Opp'n at 6, 8.) The Motion for Leave to Amend is scheduled to be heard by Magistrate Judge Erickson on November 8, 2007 – six days *after* the hearing on the Motion to Dismiss.

In the Court's view, it makes little sense for the parties to be heard on the Motion to Dismiss while Plaintiff's Motion for Leave to Amend is pending; if that Motion is granted, it will moot some (if not most) of the arguments raised by Defendant in its Motion to Dismiss. Accordingly, the Court believes that further briefing and argument on the Motion to Dismiss should be postponed until after Magistrate Judge Erickson rules on the Motion for Leave to Amend.

Based on the foregoing, and all the files, records, and proceedings herein, **IT IS ORDERED** as follows:

1. The hearing on Defendant's Motion to Dismiss, currently scheduled for November 2, 2007, is **CANCELED**; and
2. No later than 14 days after Magistrate Judge Erickson rules on Plaintiff's Motion for Leave to Amend, the Defendant shall serve and file a Memorandum addressing the impact of Magistrate Judge Erickson's ruling on the Motion to Dismiss. In the event that issues raised in the Motion to Dismiss remain outstanding, the Court will set a further briefing schedule to address those issues at that time.

Dated: October 15, 2007

s/Richard H. Kyle
RICHARD H. KYLE
United States District Judge